Forming a Partnership

Modern American Law Lecture

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FORMING A PARTNERSHIP

BY

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Judge Superior Court, Indiana.

One of a Series of Lectures Especially Prepared for the Blackstone Institute

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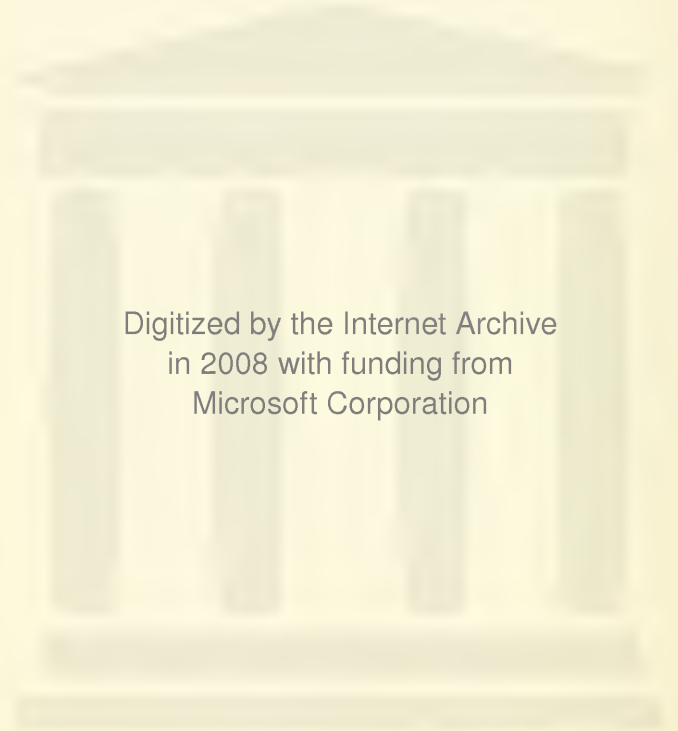
THEOPHILUS J. MOLL

Judge Theophilus J. Moll, the author of this Lecture, was born at Evansville, Indiana, in 1872. Having completed the high school course with honors, he attended DePauw University, from which he received his bachelor's degrees in philosophy and law. He was appointed clerk of the Superior Court at Evansville, and after serving two years was awarded a scholarship at Cornell University and received his master's degree in law. He was given a scholarship at Columbia University, which he resigned to take up the practice of law in Indiana, having been admitted in 1894.

In 1901 he was engaged as instructor in the Indianapolis College of Law, became its dean in 1905, and resigned in 1909 to found the American Central Law School, of which he continued as dean until its merger into the Benjamin Harrison Law School at Indianapolis, of which he was dean until 1919. He was elected Judge of the Superior Court at Indianapolis in 1914.

He wrote the article on "Receivers" in Modern American Law, has written several of the lectures in this series, is the author of a text on Independent Contractors, has contributed to the Standard Encyclopedia of Procedure, American Leading Cases, Dunham's Law of Insurance, Elliott on Contracts and the fourth edition of Elliott on Corporations. He is a member of the Indiana State and Indianapolis Bar Associations.



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I

INTRODUCTION

In discussing the organization of a partnership it is well to keep in mind the distinction drawn in Modern American Law between that relation and those of corporations, joint ownership and the like. Moreover the distinction between the legal conception of a partnership and the commercial view which treats it as a separate entity should constantly be kept in mind. The discussion here given is designed rather for practical purposes than as a technical treatise, but the reader of course apprehends that it is an every-day application of the rules of law to the ordinary affairs of a partnership and not simply an exposition of what one acquires in a counting room, manufacturing or mercantile establishment. Men of business realize more and more as time goes on that a legal training is a valuable personal asset, and if they have neither the opportunity, inclination nor ability to acquire such training, they count a lawyer a most excellent ally

in preventing litigation and losses, as well as in representing them when they are forced into court. Many firms retain lawyers by the year to look after their legal interests. A lawyer is almost indispensable in the winding up of a firm's affairs in a voluntary dissolution or an involuntary receivership or bankruptcy, and is quite indispensable in conducting the affairs of a so-called surviving partnership. In the course of this discussion, therefore, we shall give some practical suggestions, first, on how to launch a partnership; second, on how to conduct a going concern; and lastly, on how to wind up a partnership. A few practical forms are given in appropriate places.

II

HOW TO LAUNCH A PARTNERSHIP

The first consideration is to determine whether the enterprise is really one resulting in partnership, or in a corporation, a voluntary association (in those states wherein this relation is separately recognized) or a mere joint ownership. This finally is a question of intent on the part of those interested, as set out in MODERN AMERICAN LAW. In determining this, it does not ordinarily make any difference inherently whether the enterprise is a commercial, manufacturing, professional, transporting, publishing or other kind, so long as it is legal and the persons undertaking it are competent.

Aside from the business to be carried on, there is no more important element in a partnership than its personnel. Partnership is peculiarly one of

strictest confidence and trust, sometimes lasting a lifetime and often involving the entire fortunes of a number of associates. Too much care in forming the association cannot be exercised. Being a contract relation, it requires at least two parties; in the absence of a statute, it may include any number above one. Where the number interested is great it is often the better business wisdom to incorporate; for instance, in the case of a co-operative store, a farmers' protective league, a mutual insurance undertaking.

Sometimes, prospective partners are on account of their experience, resources or influence, considered desirable, whereas from a purely legal standpoint such persons are not so acceptable. An infant may have all these qualifications, but (except in rare cases) he should not be admitted as a partner, as he can set up his minority as a personal defense and there is no right of contribution against him personally in case of a deficit. Persons of unsound mind and alien enemies are naturally undesirable. Unless the local statutes are very liberal, married women are generally held disqualified to be partners, particularly when their husbands are members of the firm. The tendency is in the other direction, however. Corporations quite generally may not enter into a partnership, directly or indirectly, especially where the object is to stifle competition. Similarly the relation cannot exist between a corporation and an individual. In some jurisdictions two firms are permitted to join as a third firm, but this is not to be commended, as it is bound, sooner or later, to lead to complications both legal and practical.

DRAFTING CONTRACT OF PARTNERSHIP

Having agreed on the personnel of the firm, the next step is to see that the contract of partnership conforms to the law, both common and statutory. The former decrees that all partnerships must have in view a legal object; the latter sometimes regulates businesses, purely legal, such as banking, insurance, common carriers, etc. If a corporate form is contemplated, the statutory requirements must be met, else the result may unexpectedly be a partnership.

While a distinct firm name is not indispensable, still for practical purposes it is highly useful, especially where there are several in the firm, or where the various members are interested in other and different enterprises, or where the firm is composed of persons whose surnames are quite common in the community. Fanciful or descriptive firm names are often adopted. Care must be exercised not to use one which is deceptive or infringes on another firm's established business name. Sometimes statutes forbid a partnership to adopt a name suggesting that it is a corporation; others require registration in a public office if anything other than the true surnames of the partners is employed in the firm name; penalties are usually provided for infringements, and hence the legislative rules should be strictly complied with. A firm name once adopted should be used on all proper occasions, some instances of which appear in subdivision III.

While generally speaking, partners are each equally interested in and responsible for a firm's affairs,

this is by no means necessarily so. The members may expressly contract to participate in any proportions they see fit, and as between themselves this contract will be enforced. They may even agree to contribute equally and share the profits and losses unequally; or vice versa. If the interests are unequal, business safety dictates that it should be specifically set out in writing signed by all interested.

INTERESTS OF MEMBERS

If other than cash is contributed, the agreed value thereof should be definitely understood, whether it is real estate, personal property of any nature, or simply time and labor. No room should be left for dispute or adjustment as to the basis or value on which it is received. If one member contributes more than his agreed share of cash or its equivalent, the terms and conditions on which the firm receives and accepts such excess should be expressly and definitely understood. This applies not only at the inception but as well during the continuance of the firm, and it is especially true as to any real estate contributed by a member, and particularly as to the interest of such member's wife.

Barring unforeseen casualties, such as death or business failures, it is well to agree that the partnership relation shall continue a certain definite named period, such as a year, five years, ten years, or the like; or that it shall be self-renewing from period to period of certain duration, unless during one such period either member shall indicate a desire to terminate the relation at the end of the current period.

It is usual and quite proper, in organizing, to stipulate what course shall be pursued upon dissolution, voluntary or involuntary; what rights the remaining members shall have to acquire the interest of the retiring partner; what voice each member shall have in admitting new members or changing the scope of the firm business; what control the survivors shall have in the event one member dies. While the precise cause for a dissolution or other termination cannot be foreseen, it is not amiss to provide a solution in advance for the more frequent contingencies.

One of the most important things to provide for in launching a partnership is to specify what part each partner is to perform in carrying out the contract, what his respective rights, duties and responsibilities are to be, how much time and attention he is to devote to the firm's business, how (in cases of disagreements between the several members) disputed questions are to be decided, through what course and by what procedure substantial changes in the firm's affairs are to be made, how much and in what way and at what times each is to contribute his share to the firm's assets and is to draw out his share of the firm's profits.

If the partnership contract or agreement is reduced to writing it is of paramount importance that these elements of the contract be included and be particularized. Sometimes, though comparatively seldom, the contract of partnership must be in writing under the Statute of Frauds.

The following is submitted as a sample of Articles

of Agreement of Partnership. It is to be modified, of course, to suit varying circumstances:

ARTICLES OF PARTNERSHIP

Agreement made at Indianapolis, Indiana, this .... day of ....., 1916, by and between A. B., M. N., and Y. Z., all of said city, witnesseth:

1. Said parties agree to become and continue as partners in the wholesale and retail grocery business at Indianapolis (and, or, at such other places as may hereafter be mutually agreed upon) from the .... day of ....., 1916, to the .... day of ....., 191.., and from year to year (or for similar periods) thereafter and until one or more notify the rest to the contrary in writing during such first or any subsequent period.

2. The firm name and style shall be "Capitol Grocery Company," and the same shall not be changed except by mutual consent and shall be used for all firm purposes but not otherwise.

3. The capital of said firm shall be $50,000 to be contributed by said partners as follows: by A. B., $25,000; by M. N., $15,000, and by Y. Z., $10,000; all to be paid in cash on or before the agreed date for beginning business, except that said A. B. may assign to said firm a certain 99-year lease held by him upon the premises described as No. 189 East Washington Street, Indianapolis, and the same shall be taken and accepted as $5,000 of his said contribution. There shall be no increase or decrease in said capital except by mutual consent, and as mutually agreed upon.

4. Said A. B. shall be entitled to receive interest at 6 per cent per annum upon the difference between his contribution and the next lower contribution, and the excess of the profits above such interest shall be divided equally.

5. All moneys received on account of said firm shall be deposited in the firm's name in the bank selected by said firm, and no expenditure above $5.00 shall be paid except by check signed by the said firm by said A. B.; moneys for employes' weekly payrolls and for minor current expenses may be drawn in lump sums as needed. Said partners shall each be entitled to draw monthly not to exceed $..... in anticipation of profits from

said business; together with such additional sums as may be mutually agreed upon at the end of each fiscal year, not exceeding in the agregate, however, ninety per cent of the net profits for such year.

6. Said M. N. and Y. Z. shall devote their whole time and attention to said firm business, and said A. B. shall devote as much time as may be necessary properly to attend to all and singular the financial and office affairs of said business. Said M. N. shall supervise the internal affairs of said business and said Y. Z. the outside matters, except those delegated to A. B. In case of disagreement as to any delegated matter, a majority shall govern. Neither partner shall directly or indirectly engage in any business competing with said firm, nor shall either partner become surety for any other person.

7. Proper account books shall be kept and all partnership correspondence, vouchers and documents shall be kept at the firm's office. A general account of the firm's assets and liabilities shall be taken on the .... day of ..... at the end of each fiscal year, to be signed by all partners and permanently kept, each retaining a copy and to be binding on all except for error discovered within ..... calendar months thereafter.

8. Upon dissolution a general account as aforesaid shall be taken, the firm assets shall be sold and the debts due the firm collected as soon as possible and the proceeds paid out, (1) in paying debts of the firm due third persons, (2) in paying each partner any amount due him for sums advanced in excess of his agreed share of the capital, (3) in reimbursing each partner proportionately the actual capital by him contributed, (4) the balance, if any, to be distributed equally after deducting any interest still due A. B., as provided in item 4 above.

9. These articles may be amended from time to time by unanimous consent in writing signed by all the parties hereto.

In witness whereof we have hereunto signed our names this .... day of ....., 1916, at Indianapolis, Indiana. Executed in quadruplicate, each retaining a copy, the fourth to be placed and to remain in the office of the firm.

(Signed) A. B.
M. N.
Y. Z.

III

HOW TO CONDUCT A PARTNERSHIP

The fact that a partnership is ordinarily a business venture for anticipated profits and is a relation of utmost confidence and one by which each member is for firm purposes made both a principal and an agent for the whole enterprise, imperatively necessitates that the affairs of the firm shall be conducted in a manner best suited to promote the interests of the partnership.

The debts of the firm should never be permitted to exceed its assets. This is particularly true at the beginning of the firm's career when its credit is unestablished. Hence, no business should be begun until the terms of the partnership agreement among its several constituent members as to their respective contributions to the firm's capital, have been fully and religiously complied with. "A good beginning is half done." With the capital paid in, the firm may (and perhaps must) incur obligations for the firm's benefit; it may even incur immediate debts; but such debts and obligations should be kept within the bounds of the assets, calculated by the property secured by investing the capital and incurring the indebtedness.

A concern which cannot readily discover whether it is making or losing money, in other words, a firm which cannot easily determine whether its primary purpose of securing profits is being accomplished, is not being properly managed or conducted. Profits

are the difference between the amount of cash received and of expenses paid out. Hence, although it is diametrically contrary to the legal conception, the firm in all its dealings with third persons and even with its own members as individuals, should be considered and reckoned as a separate, distinct entity. All its books, accounts, records, publications and the like, should be opened and maintained in this way. Any departure is sure to lead to unforeseen consequences and probable complications and disasters.

FIRM ACCOUNTS

The firm should keep a separate, distinct account with each individual member, beginning with his contribution to the original capital, including any interest paid him on any excess he may have contributed and including all moneys he has drawn according to the agreed drawing account, or otherwise in violation of such agreement, and any goods bought on credit from the firm, and closing with the amount paid each such member on final accounting and distribution.

Dealings between individual members should not be permitted to be entered on the firm's books; these entries should be confined to but should include everything pertaining to the firm's finances.

The importance of taking a complete account at regular, stated times cannot be over-emphasized. The superintendence of the finances of a concern, especially if it is in any degree a commercial one, should be intrusted to one member upon whom would

therefore rest the responsibility that goes with such management. This of course should always be subject to the inspection, approval or criticism, and benefit of his associates and altogether for the best interests of the firm as an entirety.

Each member must of course strive to perform fully and faithfully his part toward the general good, keeping in mind the confidential nature of the relation. Good faith towards each other is as indispensable as due care in conducting the business. Secret deals, private profits, surreptitious competition and such things should be looked upon as well-nigh criminal. Each one associated in a partnership owes it to his fellows not less than to himself and those dependent on him, to give them the best he can in return for which they should and doubtless will give him the best they can. In fact each is mutually dependent on the others. A partnership is peculiar in that a partner is in every transaction involving the firm and within the scope of the firm business at once both a principal and an agent. In acting for the firm he is both acting for himself as a member thereof, and hence as a principal, and for his associates whom as a firm he represents as an agent. They in turn each occupy the same attitude toward him. In fact, it is well for every partner in every transaction involving the entire partnership to consider himself as simply representing an artificial being, the firm itself. He should put his loyalty to his firm foremost. His own instinct of self-preservation may safely be trusted to safeguard any selfish interests.

DEALING WITH THIRD PERSONS

In representing the firm, he should act with at least an equal degree of care, caution, diligence and good faith that he would exercise if the affair were one in which he alone were involved. In the department or territory in which he acts he should keep, preserve and report accounts and statements of all matters, to a knowledge of which the other members are entitled. He should never exploit the firm or its resources without the knowledge of his associates and their willing consent first obtained, and even then he should never go beyond the bounds of safety to the creditors of the firm.

In the absence of notice to the contrary given to a third person, each partner may enter into contracts within the scope of the firm's business and on behalf of the firm, so as to bind the firm. He should of course confine his acts to the authority conferred. And in doing so he should also be careful to see that he binds the firm as such and does not exempt the firm and bind himself alone. All orders, commercial paper, written contracts and the like should be signed by or addressed to the firm in its accustomed firm name. Thus, a check should be signed: Capitol Grocery Co., per A. B.; not A. B., manager of Capitol Grocery Co. If the firm is the beneficiary of the obligation, it should be named therein by its firm name, and not by the several names of its members. Thus, a promissory note should read: "Indianapolis, Ind., January 10, 1914, Thirty (30) days after date we promise to pay to the order of Capitol Gro-

cery Co., the sum," etc. Endorsements should be in the firm name.

Sometimes in the more important, formal contracts it is well to enumerate the several members of the firm, reciting that they are doing business under such and such a firm name. Thus in a long time lease the expression would be about as follows:

"This agreement made this 10th day of January, 1916, by and between R. S., first party, hereinafter referred to as the lessor, and A. B., M. N., and Y. Z., partners doing business under the firm name and style of Capitol Grocery Company, second parties, hereinafter referred to as the lessee, Witnesseth," etc.

Either form is proper as to bills of sale and chattel mortgages. But by reason of the arbitrary rules of the common law, deeds and mortgages of real estate to and from partnerships must specify the names of the several members of the firm interested therein, and if executed by the firm they must be signed by the individual members and not simply in the firm name through one of their number. (9 M.A.L. 361.) In a few States the rule is different and the local statutes and decisions should be consulted in such jurisdictions. A partnership as such does not have a seal as does a corporation.

DEALINGS BETWEEN FIRM AND MEMBERS

From a purely commercial standpoint, a contract may be entered into between a firm and one or more of its separate members, naming the firm as such. As a legal proposition this is impossible at common

law, but trade usages permit it and it is not illegal; it is simply unenforceable at law, although it may be the basis of an equitable suit. Such agreement should describe the partnership by its firm name as one party, and not specify the individual members, as this would lead to a legal absurdity in having the same person both promisor and promisee. A note, for example, given by one partner to his firm should name the firm as payee. A check drawn to one partner should be to that partner by name, even though he himself signs the checks for the firm, thus: "First National Bank. Pay to the order of A.B., One Hundred Dollars ($100.00). Capitol Grocery Co., per A.B."

The creditor of an individual partner avails himself of the firm's goods and especially of the firm's commercial paper (such as notes and checks) in payment of the debt of such individual partner, at his peril. Ordinarily therefore such creditor will in turn become a debtor to the firm to the extent of the goods, etc., so obtained and will secure no enforceable right against the firm on any note given him, even though signed in the firm name. So too as to an uncashed check to his order signed by the firm. A different result may follow and greater rights be secured if the check is drawn to the order of the individual partner and is then endorsed by him in blank and delivered to his creditor, or even if it is endorsed to the order of such creditor.

In compromising a disputed claim, whether arising out of contract or springing from tort, it is well

to enumerate in the body of the receipt or release given or taken, not only the firm name of the partnership but the names of its several constituents as well. This insures certainty of persons involved in case the claim is ever put in suit.

ACTIONS INVOLVING FIRMS

In nearly all the States, the business-world notion of a distinct legal entity is entirely ignored in bringing suits in which partnerships are concerned. In a common law action in which the firm is suing as plaintiff, the title of the cause would be: "A.B., M.N., and Y.Z., partners doing business under the firm name and style of Capitol Grocery Company, against R.S." If the firm is the defendant, the title may be: "R.S., against A.B., M.N., and Y.Z.," the body of the complaint alleging that they are partners doing business under the firm name, etc., as supra, or it may be "R.S., against A.B., M.N., and Y.Z., partners doing business," etc., as supra. Where there are several paragraphs of the complaint the latter form is perhaps the better. In those cases where partners are suing their associates, a recital in the caption, of the fact that they are partners doing business under a given firm name, is necessarily omitted; so also where two firms having one or more common members sue one another. In a very few States, statutes enact a different rule.

Judgments are rendered for or against the several members of the firm and not for or against the firm as such; although in those States in which firms may sue in their firm name, judgments in their favor in

such firm name are of course proper. In many States, either by custom or positive law, schedules for tax purposes are made out and filed in the name of the partnership. This has its advantages, in that it enables the firm's taxes to be paid as other ordinary expenses, and in case of delinquencies it permits the tax collector to identify and locate easily the specific property subject to levy. Some States permit mechanics' liens to be filed in the name of the filing firm.

MODIFYING PARTNERSHIP ARTICLES

All agreements between the partners themselves which substantially change any material item of the original articles of partnership should be reduced to writing and signed by each partner. Any stipulation which is out of the ordinary in partnership matters should be thus written and signed, as for example, that there shall be an unequal sharing of profits or losses, that one partner shall be compensated and another not, that one partner shall not be expected or required to devote any time to the business.

The following outline will serve as a guide in preparing a certificate of the formation of a limited partnership:

State of Indiana, }
County of Marion. } SS.

The undersigned A. B., M. N., and U. Z. hereby form a limited partnership pursuant to the Indiana Statutes, and for such purpose certify as follows:

I. The firm name of said limited partnership shall be CAPITOL GROCERY COMPANY.

II. The general nature of the business to be transacted is the wholesale and retail dealing in groceries.

III. The names, both Christian and surname, of all the persons herein and hereto, and their respective places of residence, are as follows:

Andrew Brown, residence, Indianapolis, Indiana.

Michael Nolan, residence, Indianapolis, Indiana.

Ulric Zwingle, residence, Chicago, Illinois.

The first two of whom are general partners and the third is special partner herein.

IV. That the said special partner has contributed to the stock of said partnership $2,000 in cash.

V. That said limited partnership shall continue from January 1, 1916, to December 31, 1918, on which latter date the same shall terminate.

In witness whereof we have hereunto set our hands and seals this January 1st, 1916.

ANDREW BROWN.
MICHAEL NOLAN.
ULRIC ZWINGLE.

State of Indiana, }
Marion County. } SS.

On this January 1, 1916, before me, a notary public in and for said county and state, personally appeared the above named A. B., M. N., and U. Z., to me known to be the persons named in the foregoing instrument, and they severally acknowledged the signing and executing thereof for the purposes therein set forth. Witness my hand and notarial seal.

My Commission Expires .....

LEW SHANK.

Notary Public in and for Marion County, State of Indiana.

If during or at the conclusion of an agreed period of partnership the several members conclude and agree to continue their firm business for another determinate period, they may adopt a written contract substantially as follows (after setting out the preamble):—

Whereas said parties have since ....., 191.., been engaged in the wholesale and retail grocery business at Indianapolis, Indiana, as the Capitol Grocery Company (under written articles of agreement executed by said parties dated ....., 191..), and desire to continue said business as herein set out;

It is now mutually agreed as follows:

I. Said business shall be carried on in all particulars as heretofore and be conducted as Capitol Grocery Company (as more fully appears from said original articles of partnership dated ....., 191.., and hereby made part hereof).

II. Said partnership extension and continuation shall be for the full period of .... years from the expiration of the period set out in said original articles.

III. The original articles of partnership shall be and they are hereby modified in this respect and not otherwise:

(a) That each partner shall have a drawing account of ..... dollars per month (or quarter).

(b) That the interest to be paid said A. B., on his excess contribution to the capital of the firm shall be reduced to five per cent per annum from and after the .... day of ....., 191...

(c) (Insert any other changes or additions.)

(Sign and acknowledge as in the original articles.)

IV

HOW TO TERMINATE A PARTNERSHIP

As set out in the text, MODERN AMERICAN LAW, in various places in the article on Partnership, any substantial change in the personnel of a firm has the legal effect of terminating the partnership. The dissolution may be voluntary or involuntary, and the business may be stopped, suspended or continued, but in either event the legal effect upon the old firm is the same.

If the partners mutually agree to wind up the business, the process is comparatively simple. The

partners jointly (or by certain of their number selected for that purpose) close out its assets, collect its outstanding accounts, pay off all the firm creditors, satisfy the valid claims of such partners as have contributed more than their share of the capital of the firm, pay back to each partner his share of the capital and divide up the balance (i. e., the profits) among the members according to their several interests. It is usually assumed that neither of the firm will continue to trade in the firm name, but it is always the safest course to notify those with whom the firm has had dealings (especially if they have given the firm credit) of the fact of such dissolution and discontinuance. The public generally should also be notified, but this may be done by a newspaper or other public notice.

CHANGING PERSONNEL OF FIRM

It may be mutually agreed to make a change in the personnel of the firm either by having one of the members withdraw, leaving his associates to continue the business, or by admitting a new and additional member, or by combining the two and substituting a new member for one who retires. In each such case the business of the old firm should be adjusted, both as to the individual members interested and as to the firm creditors, at least to such an extent that the relations of the new firm to the old one and of the creditors of both the old and new firms to each of the firms respectively, may not be confused or give rise to any mistakes, and notices should be sent out and published accordingly. Even though the change

which is made in the personnel of the firm is one that was within the contemplation of the parties at the time the contract of partnership was entered into, it is well to have an express, written agreement between the continuing members, on the one hand, and the outgoing or incoming partners, or both, as the case may be, on the other hand, as to the precise terms and conditions on which such change, when effected, is made.

The change may be within the contemplation of the parties and still be involuntary, as where one of the partners dies or becomes otherwise incapacitated. In addition to the course of adjustment and notice as in ordinary cases, this situation involves requirements frequently governed by state statutes as to "surviving partnerships" which must be consulted and followed. To guard against a possible question of exclusive right in the survivor, or survivors, it is well to stipulate that there shall be no benefit of survivorship and that the legal representative of each deceased partner shall become entitled to his share as part of the personal estate of the decedent (and shall or shall not, as may be agreed, have a voice in the management of the business during its winding up).

If the partnership may by agreement be terminated on notice, such notice may be in substantially this form: "Pursuant to the articles of partnership dated ....., 191.., between A.B., M.N., and Y.Z., I hereby notify you that I intend to terminate the partnership subsisting between us, on July 4, 1917. (Signed) M. N."

The following is a common form of notice of dissolution by consent: "Notice is hereby given that the partnership between the undersigned doing business at Indianapolis, Ind., as Capitol Grocery Co., is hereby dissolved. Those owing the firm will please settle at once and those to whom the firm is indebted will present their claims forthwith. (To which may be added, to suit the case:) The business in the future will be carried on by said A.B. alone (or by said A.B., Y.Z., and R.S.), who will settle all claims and collect all accounts. Signed, A.B., M.N., Y.Z."

SURVIVING PARTNERS

Upon the death of one partner, it becomes the duty of the survivors to close up the firm's affairs. The survivor is a sort of trustee for the deceased member's estate and for the creditors of the firm. Such survivor has the sole right to the possession, control and management of the firm property for closing up the firm business. Until such final settlement, the legal representatives of the decedent (in the absence of contract) can make no claim and can take no active part in winding up its affairs. If there are several survivors they act jointly. At the death of the last survivor, the trust being still unsettled, its further adjustment falls upon his legal representative. The survivor has authority to do on behalf of the trust whatever the partners themselves might have done, at least so far as winding up the business is concerned. It is his duty to pay the firm debts and distribute the surplus as soon as possible, consistently with the interests of all concerned. He must

act in the utmost good faith and with due care. Ordinarily, by statute, he must file an inventory and appraisement, together with a list of liabilities; commonly he has to give bond. He brings and defends suits involving the partnership thus terminated. Death being one of the risks incurred, a surviving partner settling the business is often held not entitled to additional compensation. If he fails properly and promptly to comply with the statutory requirements, a receiver may be appointed, who then has all the rights and duties incident to any receivership. Where the surviving partner or partners are incompetent to carry on the business for any reason, as for example infancy, coverture, alienage, mental unsoundness, etc., it is probable a receiver would be appointed in the first instance upon a proper application and showing.